

REMARKS

Introduction

The above amendments and these remarks are responsive to the Final Office action mailed on September 19, 2008. Claims 1, 3, and 27-39 are pending in the application and are rejected in the Office action as unpatentable over US7223170 to Kinzer. The September 19 Office action restates verbatim the rejections first asserted in the prior Office action mailed on March 17, 2008, with four differences:

- Whereas in the prior Office action of March 17, all rejections except for that of claim 29 were asserted under 35 U.S.C. § 102, all of the rejections in the September 19 Office action are asserted under 35 U.S.C. § 103;
- The present Office action includes an additional paragraph asserting that the use of the limited number of register memories recited in claims 33-35 and 37 are not used “for any particular purpose”;
- The rejections are indicated to have been made final; and
- The September 19 Office action addresses the arguments offered in the response filed on June 17, 2008, in the “Response to Arguments” section beginning on page 6.

Applicant's undersigned counsel had the opportunity to discuss the rejections in an interview with Examiners Victor Cheung and Dmitry Suhol on November 18, 2008. This interview is summarized in the “Interview Summary” form included in the Office communication mailed on November 26, 2008, and is also addressed in this response, below.

Applicant continues to respectfully traverse the rejections for at least the reason that Kinzer fails to disclose or even suggest the subject matter of the rejected claims.

In this response, claim 1 is amended to further clarify the subject matter for which Applicant seeks protection. Remarks below, especially when considered in light of the amendment to claim 1, demonstrate the failure of Kinzer to disclose or even suggest the subject matter recited in the pending claims. In view of the amendments above, and the remarks below, Applicant respectfully requests reconsideration of the application, along with Applicant's present Request for Continued Examination, and allowance of the pending claims.

Summary of the Interview

Applicant thanks the Examiner Victor Cheung and his Supervisor Dmitry Suhol for their time with Applicant's undersigned counsel in discussing the prior art Kinzer reference and the pending claims.

In particular, the following language from claim 1 was discussed: "game scripts operable to ... change a value of the game variable to a value that is determined as a function of both game input accepted from a controller and the value of the game variable." In the "Response to Arguments" section in the Office action, Kinzer is asserted to disclose this subject matter. As explained in Applicant's Amendment and Response filed on June 17, 2008, pages 9-11, Kinzer does not.

As can be seen by a review of the Kinzer reference, for example the sections of Kinzer cited in pages 9-11 of Applicant's Amendment and Response (3:46-58; 7:33-34; 7:65-8:10; 18:13-23; 19:4-20:7; Fig. 3, block 306; and Figs. 19A and 19B), at most, Kinzer discloses changing a game variable value (either a "jump value" or a "current clip value", the only two game variables disclosed in Kinzer) as a function of *either* user input, *or* the variable's current value, but never both.

As demonstrated in greater detail in pages 9-11 of Applicant's Amendment, Kinzer

discloses a method of playing each one of a group of clips in a randomized order by predetermining the play order of each clip in the group by using by using a set of two related values: a "current clip value" that corresponds to the next clip to be played; and a "jump value" that corresponds to the number added to the "current clip value," according to the modulo function, to determine the next "current clip value." The sets can be chosen (or "initialized") by a user of the Kinzer system, for example by using an input device to choose which of several possible game types to play. Once initialized, the order of playback of all of the clips in the group is determined by the values of the two variables: the first clip played is the one corresponding to the "current clip value"; the next is the one corresponding to the "current clip value" plus the "jump value" (which value is reset as the new "current clip value"); and so forth through the set, so that each clip is played before any clips are repeated.

During playback of a particular clip, a user of the Kinzer system may prompt the system to play the next clip in the predetermined queue via user input, for example by providing input via a controller. However, the next clip to be played (which corresponds to the "current clip value") is already determined. In other words, the user input at that point is somewhat akin to pressing the "equals" key on a calculator: doing so does is not determinative of the result of the calculation already entered into the calculator, it simply prompts the result to be displayed. In this circumstance, the next clip played will be thus the same regardless of whether user input is given or not, or of the type of user input given.

As such, in the Kinzer disclosure, the value of the next clip to be played is determined *either* by initialization of the set of values (via user input prior to any clip playback, or to reset the order of clip playback, which in either case does not consider the current value of the clip), *or* by the value of the clip being played (while proceeding through a set of clips, which does not

consider game input from a controller), but *never* by both simultaneously.

The "Response to Arguments" section asserts that "the controller input is part of the 'function' because the operation of advancing to the next clip is accomplished only with the specific input of the controller." In the Interview, the Examiners argued that this assertion is indisputable proof that Kinzer discloses that both user input, and the current value of the game variable, are determinative of the changed value of the game variable. However, as shown above, and as pointed out by Applicant's undersigned counsel in the Interview, the assertion is inaccurate. "Function," of course, designates a correspondence of a first variable to one or more others such that the value of other variables is determinative of the value of the first. The claim language under discussion indicates that (1) game input accepted from a controller, together with (2) the value of a game variable, are both determinative of the changed value of the game variable.

As such, the assertion in the "Response to Arguments" section that "a different input from the controller would not produce the same result as the 'next clip' input" is incorrect. Indeed, because once the initialization values are set, additional controller input is *not* determinative, or even considered, of the value of the next clip played. As discussed above, in Applicant's prior Amendment and Response, and in the Interview, the value of the next clip played is the same regardless of whether user input is given or not, or of the type of input given.

During the Interview, both Examiners conceded that Kinzer discloses considering input from a controller and or the current value of the clip, at *separate* times.

However, the Examiners also asserted that this was the same as Kinzer disclosing that both of these were determinative of the next clip value.

Neither was able to cite any section of Kinzer supporting this, however. Similarly,

neither was able to provide any support in the Kinzer disclosure for the assertion above, that “a different input from the controller would not produce the same result as the ‘next clip’ input,” or the assertion (also made in the “Response to Arguments” section of the Office action) that “determining the next current value and the next jump value is dependent on both the current values and the controller input.”

Despite neither Examiner being able to cite any support for the asserted construction, both were unwilling to withdraw the rejection. Also, both Examiners declined to suggest possible amendatory language to clarify the distinction between Kinzer and the claimed subject matter. Moreover, throughout the Interview, the Examiners were unclear whether they acknowledged that a distinction exists.

Claim Amendment

Of the pending claims, claim 1 is independent, and the remaining claims depend therefrom. Claim 1 is amended herein to more clearly specify the manner in which the game scripts on the recited DVD change a value of a game variable. More particularly, claim 1 is amended to recite that the game scripts are operable to change an existing value of a game variable to a new value that is determined *simultaneously by both the type of game controller input and the existing value of the game variable*. Support for this amendment may be found, for example, in Fig. 7 and in paragraphs [0055]-[0063]. Paragraph [0063] discusses “using game scripts to determine content to be played and game variable values to be changed as functions of input accepted from external data sources and values held by one or more variables.”

In the disclosed embodiment, for example, the game variable corresponding to a player’s score may be increased, decreased, or otherwise modified to a new value that is determined by both game controller input (*e.g.*, whether a player entered correct input, for example

corresponding to a response to a question) and the existing value of the game variable (e.g., a player's current score).

In other words, both simultaneously are determinative of the changed value of the particular variable; a different input from the game controller and/or a different existing value of the game variable would yield a different resulting value.

Rejections under 35 USC § 103

For completeness, this section substantially repeats the arguments first presented in pages 9-11 of Applicant's Amendment and Response to Office action of June 17, 2008.

Claims 1, 3, and 27-39 are rejected as unpatentable over Kinzer. The Office action asserts that Kinzer "generally" discloses "using a standard DVD player including a plurality of clips ... wherein a user controlled remote control ... is used to effect gameplay elements." More particularly, the Office action asserts that Kinzer discloses the game scripts recited in claim 1.

However, although Kinzer appears to discuss the use of a DVD player and its associated remote control device for gameplay that involves playback of clips on a DVD, it assuredly fails to disclose the subject matter recited in claim 1. Although Applicant in general disagrees with the construction urged in the Office action of various sections of the Kinzer reference as specific elements recited in the claims, the comments in this section demonstrate that Kinzer specifically fails to disclose game scripts as recited in claim 1. In particular, Kinzer fails to disclose at least *changing a value of the game variable to a value that is determined simultaneously by both the type of game input accepted from a controller and the value of the game variable, or controlling game flow based at least in part on the changed value of one or more game variables*, as recited in claim 1.

Rather, Kinzer is directed to a comparatively simplistic method of playing a media game

that includes using the memory of a DVD player to randomize playback of a predetermined set of clips without needing to track the clips already played (18:13-23). More specifically, Kinzer indicates that a set of values for randomizing a clip set includes a *current clip value* and a *jump value*, and that these values, or more particularly the set of these values, is initialized according to a user's selection, for example when a user uses a remote control to determine which game is to be played (19:4-31). In this set of values, the *current clip value* represents the next clip in a set of ordered clips to be processed, and the *jump value* represents the number of clips that are skipped over in determining the next clip to be played (19:32-55). Kinzer explains that either the number of clips in a set must be a prime number, or the jump value must be mathematically constrained to certain values, so that the modulo function used to "randomize" the order of clip playback will generate a series of shuffled, non-repeating clips until all of the clips in the set are played or processed (19:57-20:7). Because a certain mathematical relationship must exist between the number of clips in a particular set and the possible jump values that may be used, the sets of initialization values are predetermined, as shown in the value sets shown in the tables of Figs. 19A and 19B.

Kinzer thus fails to disclose at least *changing a value of the game variable to a value that is determined simultaneously by both game input accepted from a controller and the value of the game variable*. The only game variables disclosed in Kinzer are initialized (*i.e.*, assigned initial values) upon selection of a game by a user (7:65-8:10). Thereafter, the game variables either do not change until re-initialized (for example, the jump value remains constant until initialized to another value, and this new jump value is independent of its previous value), or change to a new value that is not a function of user input (for example, the current clip value is changed to a new value by adding the jump value according to the modulo function). Thus, although Kinzer

explains that a user may prompt the clip being processed to the next clip (7:33-34), the value that determines the next clip that is processed is *not* a function of user input—indeed, the value that determines the next clip is *the same regardless of user input*, because this is determined solely by the jump value and is independent of user input.

Moreover, it would not have been obvious to modify Kinzer to change a value of a game variable via a function that simultaneously considers both the current value of the variable and user input, such as recited in claim 1. Rather, the clip randomization technique disclosed in Kinzer is configured to play every clip in a finite set with no repeats until all clips have been played, based on a modulo function that operates when a certain mathematical relationship exists between the number of clips in a set and the jump value (3:46-58). As such, the initialization values are predetermined for each game (8:6-8; Fig. 3, block 306). Thus, because a predetermined mathematical relationship must exist in order for the modulo function to randomize the clips for non-repeating play, and because the clip playback order is thereby determined at the point at which the values are initialized, it would not be obvious for the variable value change functions to consider user input. To modify the Kinzer system to do so would be contrary to the stated purpose of the Kinzer reference, and therefore cannot be considered to have been obvious.

In addition, Kinzer fails to disclose “*controlling game flow based at least in part on the changed value of one or more game variables*,” as recited in claim 1. As demonstrated above, Kinzer does not disclose changing the value of game variables as recited in the claim. As such, it does not (and cannot) disclose controlling game flow based at least in part on such changed game variable values. As with the “*changing a value ...*” element discussed above, it cannot be

considered to have been obvious to modify the Kinzer system to include this element, for at least the same reasons.

For at least the aforementioned reasons, Kinzer fails to disclose an interactive DVD gaming system as recited in claim 1. Thus, regardless of whether or not the summary of the Kinzer reference asserted in the Office action on page 3 is correct (“Generally, Kinzer et al. disclose ...”), Applicant notes that the Kinzer game system operates in a fundamentally different manner than that recited in claim 1.

With respect to claim 27, Kinzer nowhere discloses or even suggests that a first value is changed to a second value upon accepting a first game input or to a third value upon accepting a second game input, nor does the Office action address this subject matter. Similarly with respect to claim 28, Kinzer fails to disclose the claimed subject matter, and this claim is not addressed in the Office action.

With respect to claim 31, the claim recites, in part that audiovisual content is selected as a function of both the value associated with the game variable and user-provided input. As shown above, Kinzer fails to disclose any such selection criteria that considers *both* of these factors.

With respect to claim 32, regardless of whether a communications system is operable to distinguish between a plurality of different inputs, this is not recited in the claim. Instead, claim 32 recites, in part, that *game scripts* are operable to distinguish inputs. Kinzer fails to disclose this subject matter, as demonstrated above.

With respect to claims 33-35 and 37, the Office action includes the assertion that “Applicant has not disclosed that having these specific numbers of register memories solves a stated problem of is for any particular purpose.” To the contrary, several problems solved by the

use of the specific limited numbers of register memories of DVD players, and the particular purpose therefor, are detailed in, for example, paragraphs [0026] through [0031].

Kinzer discloses a DVD player with 16 GPRMs, but does not indicate the size of each, as correctly acknowledged in the Office action. However, the Office action seems to assert that because Kinzer discloses a DVD player with 16 GPRMs, then it must include less than 1 kilobyte of memory, subject matter that is recited in claim 1.

This assertion is unsupported. Applicant's disclosure nowhere indicates that the GPRMs or other memory allocation structure in all DVD players are of a certain size, only that some do. Moreover, Kinzer expressly indicates that not all DVD players conform to the same specifications (17:62-64). Kinzer thus demonstrates that it is erroneous to conclude that even "conventional" DVD players operate or conform to recognized specifications and that there is considerable variation in the operability and structure of DVD players. Because of this, and also because Applicant's disclosure and the Kinzer reference are both silent as to the size of the memory of all DVD players, it is improper to conclude that Kinzer discloses a DVD player having a maximum of 1 kilobyte of onboard memory. As such, the Office action fails to indicate that the Kinzer reference discloses this additional element of claim 1.

For at least any of the aforementioned reasons, Kinzer fails to disclose an interactive DVD gaming system as recited in claim 1. Accordingly, claim 1 is allowable over the references of record, and the rejection of claim 1 over the Kinzer reference should be withdrawn.

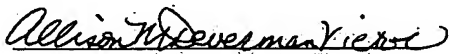
Moreover, because the remaining pending claims 3 and 27-39 depend from, and recite additional subject matter to, claim 1, the remaining pending claims are allowable for at least any of the reasons that claim 1 is allowable. However, the remarks above identify selected elements of these dependent claims that are not disclosed in Kinzer.

Conclusion

Applicant believes that this application is now in condition for allowance, in view of the above amendments and remarks. Accordingly, applicants respectfully request that a Notice of Allowance be issued that covers the pending claims. If the Examiner has any questions, or if a telephone interview would in any way advance prosecution of the application, he is encouraged to contact the undersigned attorney of record.

CERTIFICATE OF E-FILING

I hereby certify that this correspondence is being transmitted electronically via the United States Patent and Trademark Office's EFS-Web System on December 16, 2008.



Allison M. Deverman Vietor

Respectfully submitted,

KOLISCH HARTWELL, P.C.



Timothy M. Whalen

Registration No. 58,467

Customer No. 23581

Attorney for Applicant/Assignee

520 S.W. Yamhill Street, Suite 200

Portland, Oregon 97204

Telephone: (503) 224-6655

Facsimile: (503) 295-6679